

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHELLE TENZER-FUCHS, on behalf of
herself and all others similarly situated,

Plaintiffs,

-against-

SUPERME, LLC,

Defendant.

Case No: 2:20-cv-03669-JS-AKT

ECF Case

ANSWER

Defendant SuperMe, LLC (“SuperMe” or “Defendant”), by its attorneys Foster Garvey, hereby answers the Complaint herein as follows. All allegations not specifically admitted are denied.

1. Denies the allegations of paragraph 1 of the Complaint, except admits that Plaintiff brings this action against Defendant.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint.

3. Denies the allegations of paragraph 3 of the Complaint.

4. Denies the allegations of paragraph 4 of the Complaint.

5. Denies the allegations of paragraph 5 of the Complaint.

6. This paragraph 6 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

7. This paragraph 7 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

8. This paragraph 8 of the Complaint pleads statements of law to which no answer is required, except Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to Plaintiff's residence. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

9. This paragraph 9 of the Complaint pleads statements of law to which no answer is required, except Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to Plaintiff's use of Defendant's website. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

10. This paragraph 10 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint, except denies that Defendant has violated any statute.

13. Denies the allegations of paragraph 13 of the Complaint.

14. Admits that Defendant manages, controls and maintains the website at www.serenawilliams.com and that goods are offered for sale at that website. Denies the remainder of paragraph 14 of the Complaint.

15. Denies the allegations of paragraph 15 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Complaint, including all subparagraphs.

23. Admits that Defendant wholly owns and operates the website at www.serenawilliams.com; that products are offered for sale at that website that include a wide variety of items; and that goods are sold nationally. Denies the remaining allegations of paragraph 23 of the Complaint.

24. Admits that products are offered for retail sale at the website www.serenawilliams.com; that product details are provided on the website and that consumers can review those details, including prices and sale items; and that consumers can complete product purchases through the website, for delivery of those products to locations throughout the United

States, including New York State. Denies the remaining allegations of paragraph 24 of the Complaint.

25. Admits that products are offered for retail sale at the website www.serenawilliams.com; that product details are provided on the website and that consumers can review those details, including prices and sale items; and that consumers can complete product purchases through the website, for delivery of those products to locations throughout the United States, including New York State. Denies the remaining allegations of paragraph 25 of the Complaint.

26. Denies the allegations of paragraph 26 of the Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint, except denies that Defendant violated any statute and that Plaintiff was barred from purchasing products.

29. Denies the allegations of paragraph 29 of the Complaint.

30. Denies the allegations of paragraph 30 of the Complaint.

31. Denies the allegations of paragraph 31 of the Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint, except denies that Defendant violated any statute and that Plaintiff was unable to purchase products.

33. Denies the allegations of paragraph 33 of the Complaint.

34. Denies the allegations of paragraph 34 of the Complaint.

35. Denies the allegations of paragraph 35 of the Complaint.

36. Denies the allegations of paragraph 36 of the Complaint.

37. Denies the allegations of paragraph 37 of the Complaint, including all subparagraphs.

38. Denies the allegations of paragraph 38 of the Complaint.

39. This paragraph 39 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

40. This paragraph 40 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

41. Denies the allegations of paragraph 41 of the Complaint.

42. Admits that Defendant has spent money to develop and maintain the website at issue, and has generated revenue from that website. Denies the remaining allegations of paragraph 42 of the Complaint.

43. This paragraph 43 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

44. This paragraph 44 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

45. This paragraph 45 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

46. This paragraph 46 (and its subparagraphs) of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

47. This paragraph 47 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

48. This paragraph 48 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

49. This paragraph 49 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

50. This paragraph 50 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

51. Incorporates by this reference all responses to the allegations of the preceding paragraphs of the Complaint.

52. This paragraph 52 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

53. Denies the allegations of paragraph 53 of the Complaint.

54. This paragraph 54 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

55. This paragraph 55 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

56. This paragraph 56 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

57. Denies the allegations of paragraph 57 of the Complaint.

58. This paragraph 58 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

59. Incorporates by this reference all responses to the allegations of the preceding paragraphs of the Complaint.

60. This paragraph 60 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

61. Denies the allegations of paragraph 61 of the Complaint.

62. Denies the allegations of paragraph 62 of the Complaint.

63. Denies the allegations of paragraph 63 of the Complaint.

64. This paragraph 64 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

65. This paragraph 65 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Complaint.

67. Denies the allegations of paragraph 67 of the Complaint.

68. Denies the allegations of paragraph 68 of the Complaint.

69. Denies the allegations of paragraph 69 of the Complaint.

70. Denies the allegations of paragraph 70 of the Complaint.

71. Denies the allegations of paragraph 71 of the Complaint.

72. Denies the allegations of paragraph 72 of the Complaint.

73. Denies the allegations of paragraph 73 of the Complaint.

74. This paragraph 74 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

75. Incorporates by this reference all responses to the allegations of the preceding paragraphs of the Complaint.

76. This paragraph 76 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

77. Denies the allegations of paragraph 77 of the Complaint.

78. Denies the allegations of paragraph 78 of the Complaint.

79. Denies the allegations of paragraph 79 of the Complaint.

80. This paragraph 80 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

81. Denies the allegations of paragraph 81 of the Complaint, including all subparagraphs.

82. Denies the allegations of paragraph 82 of the Complaint.

83. Denies the allegations of paragraph 83 of the Complaint.

84. Denies the allegations of paragraph 84 of the Complaint.

85. Denies the allegations of paragraph 85 of the Complaint.

86. Denies the allegations of paragraph 86 of the Complaint.

87. This paragraph 87 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

88. Incorporates by this reference all responses to the allegations of the preceding paragraphs of the Complaint.

89. This paragraph 89 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

90. This paragraph 90 of the Complaint pleads solely a statement of law to which no answer is required. The Court is respectfully referred to the statute and applicable case law for the full meaning thereof. Defendant denies that it has violated any statute.

For its affirmative defenses, Defendant states as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

A website is not a public accommodation within the meaning of the Americans with Disabilities Act, the New York State Executive Law, or the New York City Administrative Code.

THIRD AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over the second and third claims, and so much of the fourth claim as seeks relief under the New York state law or New York City law.

FOURTH AFFIRMATIVE DEFENSE

Defendant has operated and maintained a fully compliant website.

FIFTH AFFIRMATIVE DEFENSE

Defendant has offered fully reasonable accommodations for the visually impaired.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are moot.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate damages.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no damages attributable to actionable conduct by Defendant.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

TWELTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of ratifications, confirmation, and/or acquiescence.

THIRTEEN AFFIRMATIVE DEFENSE

Plaintiff's claims are time barred in whole or in part.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant acted reasonably and in proper and lawful exercise of discretion and business judgment and without intent to violate Plaintiff's rights, and Defendant's actions were not discriminatory or otherwise actionable.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant did not encourage, condone, approve or participate in any allegedly discriminatory conduct.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the primary jurisdiction doctrine and the Court should refrain from exercising jurisdiction over them until the United States Department of Justice issues regulations on accessibility standards for websites under Title III of the ADA.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are or may be barred, in whole or in part, because the alterations that Plaintiff seeks to the subject website are not readily achievable nor able to be carried out without significant difficulty and would result in an undue burden upon Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

It was or is impracticable to design, construct or otherwise alter the subject website in the manner proposed in the Complaint.

NINETEENTH AFFIRMATIVE DEFENSE

Alternative means of access to Defendant's goods and services are readily accessible and available. Any departures from applicable guidelines, if any, are permitted by law insofar as any alternate designs provide substantially equivalent or greater access to and usability of the properties and the goods.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the ripeness doctrine because the United States Department of Justice has not issued regulations on accessibility standards for websites.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Alterations which do not serve primary functions are disproportionate to the cost of the overall alteration of the websites.

TWENTY-SECOND AFFIRMATIVE DEFENSE

There are no access barriers to the use or enjoyment of the subject website and/or any goods, services, programs, facilities, privileges, advantages and accommodations provided therein.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As Plaintiff failed to provide Defendant with notice as to any alleged barrier encountered or opportunity to cure same prior to instituting this suit prior to filing this action, and without attempting to resolve the alleged issues through alternative means of dispute resolution, as encouraged by Congress in 42 U.S.C. § 12212, Plaintiff cannot recover attorneys' fees and costs.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The modifications proposed or sought would impose a significant administrative or financial burden upon Defendant.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff has not experienced or been subject to any barriers to the access, use or full enjoyment of the goods, services, facilities, privileges, advantages, or accommodations available at the subject website as a result of any acts or omissions of Defendant.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff is and was not a bona fide patron or user of the subject website.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages are de minimus.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The Complaint fails to qualify as a class action because, among other things, the allegations of the Complaint fail to meet the numerosity, typicality, commonality, superiority and/or predominance requirements for class actions.

WHEREFORE Defendant SuperMe LLC respectfully requests that the Complaint be dismissed with prejudice, that it be awarded the costs and disbursements of this action and such other, further and different relief as to the Court seems just and proper.

Dated: New York, New York
September 24, 2020

FOSTER GARVEY P.C.

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